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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th April, 2023

No. 13/1/9959-HII(2)-2023/5817.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 121/2016 dated 28.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

MARIYAMMA V.S. W/O SH. T.S. ACHAN, C/O SAROJ BALA, R/O HOUSE NO. 2139,
TOP FLOOR, SECTOR 22-C, CHANDIGARH. (Workman)

AND

1. M/S KAPOOR'S KIDNEY & UROSTONE CENTRE PVT. LTD. SITE NO. 2, NEAR GURUDWARA, OPPOSITE TRAFFIC LIGHTS, SECTOR 46-D, CHANDIGARH THROUGH ITS MANAGING DIRECTOR.
2. DR. ANSHUMAAN V. KAPOOR, MANAGING DIRECTOR, M/S KAPOOR'S KIDNEY & UROSTONE CENTRE PVT. LTD. SITE NO. 2, NEAR GURUDWARA, OPPOSITE TRAFFIC LIGHTS, SECTOR 46-D, CHANDIGARH. (Management)

AWARD

1. Mariyamma V. S., workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was working as a Staff Nurse with the managements since 26.09.2002 i.e. for the last 14 years. The workman was not issued any appointment letter. The entire service tenure of the workman was satisfactory and there was nothing adverse against her. The workman was getting monthly salary of ₹ 9,300/- out of which ₹ 1,000/- was deducted towards provident fund. As such last drawn salary of workman was ₹ 8,300/- per month. The workman was working as Staff Nurse which comes under category of Class - III staff. The workman was performing technical duties such as TPR, vain flow etc. among other duties assigned to her. The workman was working after the entire second floor ward of the hospital. The workman was performing her duties very honestly and efficiently as is evident from the experience certificate enclosed with the claim statement. Instead of rewarding her for her services, she was handed over a letter dated 02.06.2016 vide which her services were

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Location: Chandigarh

terminated without assigning any justifiable reasons. The termination letter was not preceded by any warning letter nor was any explanation sought from the workman at any point of time. The workman had been doing her duties diligently as was evident during her tenure of 14 years not even a single complaint or act of misconduct was attributed to her from the management or from the patients treated by the workman. In fact, the management's have themselves issued a certificate appreciating the services of the workman. The workman was not served with any charge sheet or any notice but was straightway terminated from service. The management grossly violated the principles of natural justice but by not giving a hearing to the workman before taking such harsh step. The letter dated 02.06.2016 vide which the services of the workman were terminated is based on complete false, vague and baseless allegations. The managements have failed to comply the principle of 'first come last go' in case of the workman. The employees junior to the workman are still working with the management and only the workman was singled out which shows partiality and malice on part of the management. The workman has been made to face hardships by the abrupt, illegal, arbitrary and baseless order of the management. Thus, termination of the workman is totally illegal and in violation of the principles of natural justice and provisions of the ID Act. Prayer is made that the termination order dated 02.06.2016 may be set aside and the workman may be reinstated in service of the management from the date of her illegal termination along with full back wages, seniority, all attendant benefits and consequential relief of increments and revised pay etc. be awarded with interest @ 9% per annum.

2. On notice, management No.1 & 2 contested the claim statement by filing a joint written statement on 06.12.2017 wherein the preliminary objections are raised on the ground that the demand notice and claim statement are not maintainable as the workman has not approached this Tribunal with clean hands. The workman has suppressed the material facts in the demand notice and claim statement. The demand notice is an attempt to implicate the management into undesired litigation. On 01.06.2016 the workman indulged in serious acts of misconduct and even threatened to commit suicide to defame the management hospital. The workman being a lady and issuing such threats has also indulged in criminal offence under IPC as well as serious misconduct. The workman was called by the Director of the Hospital to explain her conduct to tender an apology but instead of apologizing the workman left the hospital. Under the circumstances, the hospital management was left with no other alternative but to give her notice and report the matter to the police. The management reserves its right to prove the misconduct of the workman by leading appropriate evidence before this Court. The management is a hospital and the workman was deployed as Nurse, which is an important function in treatment of patients. The staff involved in the medical treatment has to show decent conduct at all times especially in front of the patients and their attendants. Any conduct subversive of discipline and against the ethics of medical profession disentitles the erring employee to serve such organisation such as hospital, which are temples of compassion and faith. The workman indulged in such activities, which if allowed to happen in hospital, would result in ruining these temples of compassions. The management hospital has lost faith / confidence in the workman for her conduct. Thus, the demand notice and claim statement may be rejected.

3. Further on merits, it is stated that the workman joined the management hospital from 01.08.2005 and not from 26.06.2002 as alleged. Prior to this the workman was working with the founder of this hospital at his private clinic. The management hospital was established in 2005 only. This fact can be proved from the workman's application form for the post of Staff Nurse (Trainee) on 01.08.2005. The offer letter and appointment letter was issued to the workman on 20.07.2005 and 01.08.2005 respectively. The work & conduct of the workman was not satisfactory and her behaviour was very much erratic. The workman was issued a show cause notices and warnings for misconduct and dereliction of duty during her tenure with the hospital dated 25.05.2010, 09.02.2011 and 12.09.2013. The workman was drawing gross salary of ₹ 9,300/- from which statutory deductions of EPF and ESI were made and the net salary was ₹ 8,300/-per month. The single Staff

Nurse cannot handle an entire floor single handedly with the patient strength of 7. The nursing duty is always in shifts and it is a team work. The workman left the hospital on 01.06.2016 without finishing the shift time i.e. 10:15 A.M. without any intimation and without handing over IPD patients care records to the hospital staff and managements. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed.

4. The workman filed replication to the written statement, wherein the contents of the written statement except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed vide order dated 18.01.2018:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

6. In evidence, the workman Mariyamma V. S. examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'A1' and Exhibit 'A2'.

Exhibit 'A1' is experience certificate dated Nil issued Dr. Anupama A. Kapoor - Hospital Administrator on the letter pad of Kapoor's Kidney and Uro Stone Centre Pvt. Ltd. relating to the workman Mariyamma. **Exhibit 'A2'** is one month notice dated 02.06.2016 issued by the management to the workman.

7. The workman examined AW2 Swarup Chand Katoch - Consultant, Kapoor's Kidney Hospital, Sector 46, Chandigarh who brought into evidence the copy of wage sheet relating to the workman for the month of June 2016 vide Exhibit 'AW2/1' and copy of the attendance register of the staff of May 2016 vide Exhibit 'AW2/2'.

8. The workman examined AW3 Mor Singh - OT Incharge, Kapoor's Kidney Hospital, Sector 46, Chandigarh; AW4 Suja - Nurse, Kapoor's Kidney Hospital, Sector 46, Chandigarh and AW5 Pravinder Kumar- Executive, M/s Detamax Industrial Area, Mohali, who brought into evidence authority letter in his favour issued by Director, Kapoor's Kidney & Uro Stone Centre Pvt. Ltd. vide Exhibit 'AW5/A' and computerised copy of record of Employees Provident Fund (EPF) with regard to the employees of the management vide Exhibit 'AW5/1' to Exhibit 'AW5/12'.

9. On 10.02.2022 Learned Representative for the workman closed the evidence on behalf of the workman.

10. On the other hand, management examined MW1 Dr. Anshumaan V. Kapoor, whose examination in chief was recorded on 05.04.2022 but he did not appear for his cross-examination. On 11.11.2022 Learned Representative for the management gave up MW1 Dr. Anshuman V. Kapoor on the ground that he is unable to attend the Court due to unavoidable circumstances.

11. Management examined MW2 Anupama, who tendered her affidavit Exhibit 'MW2/A' and MW3 Gagandeep, who tendered her affidavit Exhibit 'MW3/A' along with documents Mark 'R1' and 'R2'.

Mark 'R1' is copy of written complaint dated 22.07.2016 moved by Dr. Anshumaan V. Kapoor, Managing Director to SHO, PS Sector 34, Chandigarh.

Mark 'R2' is copy of written intimation dated 06.07.2016 sent by Dr. Anshumaan V. Kapoor to SSP, Sector 9, Chandigarh.

On 16.02.2023 Learned Representative for the management closed evidence.

12. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :-

Issue No. 1 :

13. Onus to prove this issue is on the workman.

14. Under this issue workman Mariyamma V. S. examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'A1' and Exhibit 'A2'. For corroboration the workman examined AW2 Swarup Chand Katoch, who brought the attendance register from June 2012 to June 2016, salary register April 2013 to June 2016. AW2 deposed that the workman Mariyamma was working with the management from June 2005 to June 2016 and she had drawn her salary till June, 2016. AW2 proved copy of wage sheet for the month of June 2016 vide Exhibit 'AW2/1' and deposed that the workman attended the hospital for the month of May, 2016 and produced on record copy of attendance register of May 2016 vide Exhibit 'AW2/2'.

15. AW3 Mor Singh deposed that he is summoned witness. He joined the management at their hospital in Sector 20, Chandigarh in the year 2002 as OT Assistant and he shifted in Sector 46 Branch of the management in the year 2006 and since then he is working in Sector 46 Branch of the management. The workman Mariyamma joined with the management in the year about 2002. He deposed that he did not know whether the services of the workman were terminated by the management or not, however, it is within his knowledge and hearse that the workman had altercation with some staff member. He did not know whether the workman had went for duty in the month of June, 2016.

16. AW4 Suja deposed that she is summoned witness. She is working with the management since 2002 as Nurse. The workman Mariyamma joined the management as Nurse in Sector 20, Chandigarh in the year 2002. Thereafter the workman was shifted in Sector 46 Hospital. The workman herself abandoned the service of her own accord but she did not know the date of leaving the job.

17. AW5 Pravinder Kumar produced the summoned record relating to EPF and proved computerised copy of EPF record vide Exhibit 'AW5/1' to AW5/12'.

18. On the other hand, management examined MW2 Anupama, who vide her affidavit deposed that she is working with the respondent-management as Matron since 20.10.2006 and is conversant with the facts of the case. The respondent-management is a hospital and Mrs. Mariamma (workman) was deployed as Nurse which is an important function in treatment of patients. The staff involved in medical treatment has to show decent conduct all the times especially in front of the patients and their attendants. Any conduct subversive of discipline or against the ethics of medical profession disentitles the erring employee to serve such organization such as hospitals which are temples of compassion and faith. The workman indulged in such activities which if allowed to happen in hospitals would result in ruining these temples of compassion. She further deposed that on 01.06.2016 at about 8:30 a.m., Sis. Maryama had an altercation with Sis Hemlata on the floor in front of patients and her (deponent) wherein Sis Maryama threatened to commit suicide. At 10:00 a.m., mater was discussed with Dr. A V Kapoor by her. Dr. A V Kapoor called Sis Hemlata and Sis Maryama in his office in the presence of Dr. Vikram, Dr. Gagan, Sis Suja and her (deponent) to explain the incident. After hearing the matter, Dr. A V Kapoor asked Sis Maryama to submit her explanation with apology in writing. Sis Maryaman refused to give any apology and again threatened to commit suicide if the matter was proceeded further and left the hospital in a fit of anger. She never returned back to her duties thereafter.

19. Management examined MW3 Gagandeep, who vide her affidavit Exhibit 'MW3/1' deposed all the material contents of written statement which are not reproduced here for the sake of brevity.

20. From the oral as well as documentary evidence led by the parties, it comes out that the workman Mariyamma V. S. was working as a Nurse with the management office. The workman alleged that she joined services with the management in on 26.09.2002 whereas the management has taken the plea that the petitioner joined the management hospital 01.08.2005. The management has taken the plea that the management hospital was established in year 2005 and there is no question of joining the hospital prior to its establishment in the year 2002. To my opinion, aforesaid oral plea taken by the management that management hospital was established in the year 2005 is not substantiated with any documentary proof to this effect. The record of EPF Exhibit 'AW5/1' to Exhibit 'AW5/12' at the most shows the period since when the employees of the management were covered under the EPF scheme. On the other hand, the plea taken by the workman that she is working with the management since year 2002 stands proved from the experience Exhibit 'A1'. Although Exhibit 'A1' does not bear any date of issuance but the management has not denied that experience certificate Exhibit 'A1' was issued by the management. In this regard MW3 in her examination in chief by way of affidavit Exhibit 'MW3/A' deposed that the certificate Exhibit 'A1' was obtained by the workman from the management in good faith to seek benefits from some Government Department. The aforesaid version of MW3 would support the plea of the workman that the experience certificate Exhibit 'A1' has been issued by the management. In experience certificate Exhibit 'A1' the management has certified that Mrs. Mariyamma W/o Mr. T. S. Achan is working with them as Nursing Staff since September 2002. She is hard working and caring to pre & post operative patients. She will be an asset to an institute wherever she joins. In case the plea of the management that it was established in the year 2005 is admitted as correct then it would imply that the management has issued fake certificate to the workman. Moreover, the management did not prove into evidence any offer letter dated 20.07.2005 and appointment letter dated 01.08.2005 which is alleged in the written statement.

21. Admittedly, the management has terminated the services of the workman on 02.06.2016. The management has taken the plea that before terminating the services the workman was issued memo on 25.05.2010 and 12.09.2013 for misconduct but the workman refused to accept these letters. The management has failed to prove the aforesaid plea of issuance of memos as the copy of the memo dated 25.05.2010 and 12.09.2013 is not proved into evidence. It is also not explained whether the said memos were issued by hand or through post or any other mode of communication. The management has also alleged that before termination one month notice dated 02.06.2016 was given to the workman and the salary for the month of May 2016 through cheque was sent to the workman by post on 03.06.2016. The workman brought into evidence copy of notice dated 02.06.2016 vide Exhibit 'A2' whereby the services of the workman were terminated w.e.f. 02.06.2016. The management did not prove on record the particulars of the cheques vide which the salary for May 2016 and notice pay in lieu of one month notice was sent to the workman. The management has also not proved into evidence any postal receipt showing that the salary for May 2016 through cheque was sent by post to the workman.

22. As far as the incident dated 01.06.2016 is concerned, the management has brought into evidence Mark 'R1' and 'R2' but these documents are not sufficiently proved into evidence as no witness is examined from PS, Sector 34, Chandigarh to prove the record of written complaint dated 22.07.2016 and no witness is examined from office of SSP, Sector 9, Chandigarh to prove intimation sent through written letter dated 06.07.2016. The management has not proved the fate of written complaints / applications Mark 'R1' and Mark 'R2'.

23. The fact that the services of the workman were terminated on 02.06.2016 is not disputed. The workman has completed 240 days of service in a calendar year immediately preceding her termination, thus the provisions of the ID Act are attracted. It is not the case of the management that before termination any show cause notice was issued or any domestic inquiry was held. Therefore, the termination of the workman is in violation to the provisions of Section 25-F of the ID Act. There is no document on record to assess the alleged

increment on salary. Admittedly, after termination and during the pendency of the present case the workman has attained the age of her superannuation i.e. 58 years on 01.06.2018. The plea taken by the Learned Representative for the workman that the age of superannuation of the workman is 60 years instead of 58 years is not substantiated without any documentary evidence to this effect. In view of the discussion made above, the termination of the workman is illegal. Since the workman has already attained the age of superannuation, the workman is deemed to be reinstated with continuity of service from 02.06.2016 till the age of superannuation i.e. 01.06.2018. As proved from Exhibit 'AW2/1', the gross salary of the workman of June 2016 is ₹ 9,300/- and after deductions, net salary is ₹ 8,093/-. Consequently, the workman is held entitled to salary from the date of termination i.e. 02.06.2016 till her superannuation on 01.06.2018.

24. Accordingly, this issue is decided in favour of the workman and against the workman.

Relief :

25. In the view of foregoing finding on the issue above, this industrial dispute is allowed to the effect that the workman is deemed to be reinstated with continuity of service from 02.06.2016 till the age of superannuation i.e. 01.06.2018 and is entitled to salary from the date of termination i.e. 02.06.2016 till her superannuation on 01.06.2018. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 28.02. 2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Samiya Alam, W/o Md. Mumtaj Alam, R/o # 653A, Sector 31-A, Chandigarh, have changed my name to Shatakshi Suman.

[524-1]

I, Jagjit Bhalla, S/o Sh. Om Parkash Bhalla, R/o H. No. 2404, Sector 37-C, Chandigarh, have changed my minor son name from Rajveer Bhalla to Rhythm Bhalla.

[525-1]

I, Neelam Kumari, W/o Sunil Kumar Gupta, R/o H. No. 1449, Sector 20-B, Chandigarh, have changed my name to Neelam Gupta.

[526-1]

I, Rekha, W/o Raja Ram Pandit, # 3790, Sector 56, Chandigarh, have changed my name to Rekha Devi.

[527-1]

I, Raja Ram, S/o Mohan Pandit, # 3790, Sector 56, Chandigarh, have changed my name to Raja Ram Pandit.

[528-1]

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